

In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

December 22, 1999

Dear Xxxxx:

This letter is in response to your letter dated November 24, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is in the business of selling and installing residential and business security alarm systems. At the time of sale, the customer signs a 24 month retail installment contract agreeing to pay a specified amount per month in exchange for the equipment, installation and monitoring service. Since we are not currently equipped to provide monitoring services we sell these contracts and title to the security equipment to BUSINESS who resales them to CORPORATION. The customers remit payment directly to CORPORATION each month.

In your opinion, who bears the burden of tax in this scenario? Can the burden be placed upon the customer or are security systems considered an improvement to real estate? If the burden can be passed to the consumer, whose responsibility is it to collect and remit the tax? Should we obtain a resale certificate from BUSINESS or CORPORATION?

To ensure that the proper amount of tax is paid and that the appropriate party is charged, a letter ruling from you will be greatly appreciated. If you should need any additional information, please feel free to call me at #####.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201. Section 1 of the Retailers' Occupation Tax Act states, in part, as follows:

"Construction contracts for the improvement of real estate consisting of engineering, installation, and maintenance of voice, data, video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within

the meaning of this Act if they are sold at one specified contract price."

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Contractors incur Retailers' Occupation Tax upon the sale of items that are not permanently affixed to real estate. However, please note that Section 1 of the Retailers' Occupation Tax Act states that "[c]onstruction contracts for the improvement of real estate consisting of video, security, and all telecommunication systems do not constitute engaging in a business of selling tangible personal property at retail within the meaning of this Act if they are sold at one specified contract price". Consequently, even if some items used in such contracts are not permanently affixed, the liability incurred by the contractor is a Use Tax liability if the provisions of this section are met.

When persons install security alarm systems, they act as construction contractors and owe Use Tax on the cost price of the tangible personal property they install.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel